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SENATE BILL 402

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO CHILD CARE; ENACTING A NEW SECTION OF CHAPTER 50
NMSA 1978 TO PROVIDE FOR COLLECTIVE BARGAINING AND
REPRESENTATION OF CHILD CARE PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] FAMILY CHILD CARE PROVIDER COLLECTIVE
BARGAINING--REPRESENTATION.--

A. The purpose of this section is to authorize
family child care providers to organize and to use collective
bargaining on all matters specified in this section. It is the
intent of the legislature that the state action exemption to
the application of federal and state antitrust laws be fully
available to the extent that the activities of the family child

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1 care providers and their representatives are authorized under
2 this section.

3 B. Family child care providers shall have the right
4 to form, join or assist a labor organization for the purpose of
5 collective bargaining through representatives chosen by family
6 child care providers without interference, restraint or
7 coercion and shall have the right to refuse any such
8 activities.

9 C. The exclusive representative may be selected by
10 mail ballot election conducted by a reputable organization with
11 experience in conducting representation elections. In order
12 for an election to occur, a representative or representative
13 organization shall have collected signed cards from at least
14 thirty percent of affected family child care providers
15 indicating their desire for representation. The organization
16 conducting the election shall establish procedures to ensure
17 the secrecy of any ballot cast in any election held pursuant to
18 this section. Costs of the election shall be borne by the
19 labor organization seeking exclusive representative status.
20 The providers in the unit shall be offered the opportunity to
21 choose between the following:

22 (1) representation by the provider
23 organization; or

24 (2) no representation.

25 D. Within ten days of receiving authorization cards

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1 requesting a mail-in ballot election, the children, youth and
2 families department or another appropriate state agency shall
3 submit a list verifying all eligible family child care
4 providers in the state to the organization making the request.

5 E. A labor organization that has been certified
6 through the process as representing the family child care
7 providers shall be the exclusive representative for all family
8 child care providers for the purposes of negotiating a
9 collective bargaining agreement with the children, youth and
10 families department.

11 F. The children, youth and families department
12 shall meet with the family child care providers and their
13 exclusive representative with the purpose of entering into a
14 written agreement that shall be binding upon both the state and
15 the exclusive representative. The written agreement shall
16 include a binding arbitration procedure, a grievance process,
17 the creation of a labor-management committee that will meet
18 regularly to discuss concerns and issues as they arise and
19 mechanisms for dues collection.

20 G. Topics of negotiations shall include terms and
21 conditions under which family child care providers provide
22 child care in their homes and in the homes of parents,
23 including reimbursement rates and payment procedures for
24 publicly funded care, health and safety conditions, the
25 monitoring and evaluating of family child care homes, licensing

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1 and other fees, quality rating standards, training and
2 certification requirements and any other matters that would
3 improve recruitment and retention of qualified family child
4 care providers and the quality of the programs they provide.
5 The labor organization and the state agency shall work together
6 to explore systems for family child care providers to have
7 access to affordable, comprehensive health insurance coverage.

8 H. An agreement provision by the state and the
9 exclusive representative that requires the expenditure of funds
10 shall be contingent upon the specific appropriation of funds by
11 the legislature and the availability of funds.

12 I. In order to ensure that the children, youth and
13 families department's mandate for quality measures continues
14 for all licensed providers of child care services, the
15 department shall ensure the adequate allocation of appropriated
16 funds to those providing the highest-quality care, including
17 licensed centers and licensed family child care providers.

18 J. Should the parties be unable to reach an
19 agreement, the parties shall follow the impasse resolution
20 procedure as outlined in the Public Employee Bargaining Act.

21 K. The children, youth and families department
22 shall not:

23 (1) discriminate or knowingly allow any other
24 organizations with which the children, youth and families
25 department contracts to administer services related to child

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1 care to discriminate against a family child care provider with
2 regard to the terms and conditions of its relationship with the
3 provider because of the provider's membership in a labor
4 organization;

5 (2) take negative action against a family
6 child care provider or knowingly allow any other organizations
7 with which the children, youth and families department
8 contracts to administer services related to child care to take
9 negative action because the provider has signed or filed an
10 affidavit, petition, grievance or complaint or given
11 information or testimony or because the provider is forming,
12 joining or choosing to be represented by a labor organization;

13 (3) refuse to bargain collectively in good
14 faith with the labor organization; or

15 (4) refuse to comply with a collective
16 bargaining agreement reached with the labor organization
17 pursuant to this section.

18 L. The labor organization shall not:

19 (1) discriminate against a family child care
20 provider with regard to labor organization membership because
21 of race, color, religion, creed, age, sex or national origin;

22 (2) refuse to bargain collectively in good
23 faith with the children, youth and families department; or

24 (3) refuse to comply with a collective
25 bargaining agreement reached with the children, youth and

1 families department pursuant to this section.

2 M. If either party believes a provision of this
3 section has been violated, the parties shall follow the public
4 employee labor relations board's rules of prohibited practice
5 proceedings.

6 N. By entering into an agreement, the children,
7 youth and families department and the exclusive representative
8 do not intend to interfere with parental rights to select or
9 deselect family child care providers to provide care for
10 children.

11 O. In enacting bargaining rights for family child
12 care providers, the state intends to provide state action
13 immunity under federal and state antitrust laws for the
14 activities of family child care providers and their exclusive
15 bargaining representative to the extent such activities are
16 authorized by this section.

17 P. As used in this section:

18 (1) "exclusive representative" means a labor
19 organization that, as a result of certification, has the right
20 to represent family child care providers in an appropriate
21 bargaining unit for the purposes of collective bargaining;

22 (2) "family child care provider" means a
23 person who provides care services and supervision for children
24 in the provider's own home under regulations established by the
25 children, youth and families department and who is:

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(a) licensed by the state; or

(b) registered with the state to

participate in the child and adult care food program and is a vendor in the state and federal child care assistance program; and

(3) "labor organization" means a family child care provider organization whose purposes include the representation of family child care providers in collective bargaining and in otherwise meeting, consulting and conferring with the children, youth and families department on matters pertaining to family child care provider relations.

Q. If any part or application of this section is held invalid, the remainder or its application to other situations or persons shall not be affected."